



May 16, 2008

**BY PERSONAL DELIVERY**

Honorable Ross Johnson, Chairman  
& Commissioners Remy, Huguenin, Leidigh and Hodson  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814

**RE: FPPC AGENDA ITEM 7 (MAY 19, 2008 COMMISSION MEETING)**

Dear Chairman Johnson & Commissioners:

The California Political Attorneys Association Enforcement Task Force (CPAA Task Force) writes this letter regarding the proposed amendments to Regulations 18360 and 18361.

The CPAA Task Force believes the Commission has moved in the right direction on this issue. We believe the proposed regulations represent a good first step in revising the Commission's enforcement procedures to conform to the Act's enforcement provisions and locking in better due process protections for potential Respondents in enforcement proceedings. These changes also will benefit complainants, Commissioners and the public generally. With respect to specifics, we would support the regulations if you:

- (1) Amend proposed Regulation 18360, as proposed by Lance H. Olson, Esq., in his April 21, 2008 letter.
- (2) Amend proposed Regulation 18360 to include a specific provision with respect to the opportunity of Respondents to respond to complaints, copies of which they have received under proposed subdivision (f) of Regulation 18360. We do not propose that such an amendment contain either a specific deadline for such responses from Respondents or for any Commission action in response to such responses.

**Comment:** The CPAA Task Force agrees that the proposed procedures as drafted enable Respondents to take advantage of the opportunity to obtain a copy of the

complaint against them to seek early termination of unmerited complaints against them. However, the reason to include a specific provision for responses to complaints is to provide a "roadmap" to those Respondents who may be less familiar with the Commission's practical procedures than CPAA's members. While we recommend this approach as a means to promote Commission efficiency and reduction of the backload of genuine complaints, we do not recommend that such procedures should lock the Commission or its enforcement staff into unachievable deadlines to respond to Respondents' replies.

- (3) Amend proposed Regulation 18361 to provide specifically that the Executive Director will not, with respect to enforcement activity, make recommendations as to action on enforcement matters to the Commission, while the Executive Director is participating in the investigative or enforcement activities of the Enforcement Division.

**Comment:** The CPAA Task Force also believes the amendments to regulation 18360 and 18361 reflect an acknowledgment of the potential due process problems that arise when the Executive Director participates in enforcement decision-making. While the Commission staff's proposed solution provides for disqualification and delegation of probable cause duties, provides a case-by-case resolution of the problem, the CPAA would prefer a more explicit acknowledgment that the Executive Director will not be involved in making recommendations concerning enforcement investigations or prosecutions, as an across-the-board rather than a case-by-case approach to addressing this due process issue.

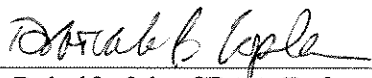
We also believe that the Commission should not stop with the adoption of these amendments. As outlined in previous communications, we strongly believe the Commission should:

- (4) Calendar on your regulatory calendar, notice and adopt further amendments to the other 18360 regulations that are consistent with the pending regulatory amendments. See CPAA Letter of March 12, 2008, and Charles H. Bell, Jr. Letter of February 13, 2008, attachment. We are particularly interested in providing similar guarantees in the procedures by which the Commission decides to initiate civil litigation.
- (5) Calendar on the Commission agenda an action item for the Commissioners' consideration of a Statement of General Enforcement Principles, giving the staff direction to prepare a proposed set of principles and the public an opportunity to comment on the proposed set of principles.

Hon. Ross Johnson, Chairman  
Commissioners Remy, Huguenin, Leidigh & Hodson  
May 16, 2008  
Page 3

We appreciate the opportunity to address these issues. We understand that several CPAA members will be present and available to offer their perspectives and comments on these issues at the May 19, 2008 Commission meeting.

Very truly yours,



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On Behalf of the CPAA Enforcement Task Force

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